

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Monday, September 19, 2016
)	
Defendants.)	(12:02 p.m. to 1:18 p .m.)

TELEPHONIC MOTIONS HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
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Corpus Christi, Texas; Monday, September 19, 2016; 12:02 p.m.

(Call to Order)

THE COURT: All right, good afternoon, counsel.

Court calls Cause Number 2:13-CV-193, Veasey, et al. vs. State of Texas. So I believe Brandy already took roll as to counsel. Everyone is appearing by phone. So who's going to take the lead for the Veasey Lulac claimants?

MR. DUNN: Good morning, this is Chad Dunn.

THE COURT: Good morning. Or afternoon, I guess already. For Texas NAACP and Malc?

MR. ROSENBERG: Ezra Rosenberg, Your Honor. And I will be making the initial argument on behalf of the private plaintiffs.

THE COURT: Okay. For Taylor? For plaintiff Taylor?

MR. GARZA: Jose Garza, Your Honor.

THE COURT: Okay. The Association of Judges, I don't believe Mr. Rios is on the line. The League of Young Voters?

MS. ADEN: Leah Aden, Judge, thank you.

THE COURT: Okay. The Government, the United States of America?

MR. FREEMAN: This is Dan Freeman, Your Honor.

THE COURT: Okay. And we have the State of Texas.

MS. COLMENERO: This is Angela Colmenero, Your Honor.

THE COURT: Okay. All right, so we're here on plaintiffs -- all plaintiffs have filed a motion to enforce the

1 interim remedial order. Two separate motions filed, but all
2 plaintiffs have joined, I believe, in the motions. So,
3 Mr. Rosenberg, do you want to proceed?

4 **MR. ROSENBERG:** I thought that Mr. -- if it's okay
5 with Your Honor, Mr. Freeman would proceed first with DOJ's
6 motion.

7 **THE COURT:** Okay.

8 **MR. ROSENBERG:** And then we'll continue with ours and
9 join with theirs.

10 **THE COURT:** All right, Mr. Freeman.

11 **MR. FREEMAN:** Thank you, Your Honor. At the Court's
12 direction, the parties engaged in painstaking negotiations over
13 language that the parties had jointly presented to this Court
14 at the conclusion of its remedial order, and this Court
15 indicated that language verbatim into its interim remedial
16 order. Nonetheless, the State's education program violates the
17 Court's remedial order by deviating from its clear language in
18 two meaningful ways. First, the State has excised the word
19 "reasonably" to limit its communications to voters to say that
20 the remedial order is only available to those who,
21 quote --

22 **THE COURT:** I'm going to butt in -- I'm so sorry.

23 **MR. FREEMAN:** Absolutely.

24 **THE COURT:** I'm going to butt in really quick because
25 it sounds like are you on speaker phone?

1 **MR. FREEMAN:** I am not, Your Honor.

2 **THE COURT:** Okay. All right, proceed. Are you
3 having trouble, Genay?

4 **THE ERO:** Some of the words were not very clear.

5 **THE COURT:** Yeah. Okay. Well, go ahead and proceed.
6 We're having a little bit of issues hearing you.

7 **MR. FREEMAN:** I apologize, Your Honor. We may be
8 having some issues with our phones, but please definitely let
9 me know.

10 **THE COURT:** Okay, you sound better now. So whatever
11 you're doing right now, keep doing.

12 **MR. FREEMAN:** I'm doing the same thing, but thank
13 you. The State has excised the word "reasonably" to limit its
14 communications to voters to state that the remedial order is
15 available only for those who, quote, cannot obtain SB 14 ID.

16 **THE COURT:** I'm sorry, the recorder is not able to
17 take you.

18 **MR. FREEMAN:** Would you like me to try my cell phone,
19 Your Honor?

20 **THE COURT:** No, that will make it worse. Maybe are
21 you really close to the phone? Maybe step --

22 **MR. FREEMAN:** Yes. Is this better?

23 **THE ERO:** That seems better.

24 **THE COURT:** Talk to us some more.

25 **MR. FREEMAN:** Is this better, Your Honor?

1 **THE COURT:** Yes, it is.

2 **MR. FREEMAN:** Okay, I switched hands.

3 **THE COURT:** Go ahead.

4 **MR. FREEMAN:** Thank you. The State has excised the
5 term "reasonably" from this order -- from the language of the
6 Court's order to limit the remedy for those who, quote, cannot
7 obtain SB 14 ID. But the reasonable impediment or difficulty
8 is the linchpin of the Court's remedy. It is what captures the
9 type of voters who are harmed by SB 14 under the Section 2
10 results standard. And it is troubling that the language that
11 Texas is now using in its voter education materials is the same
12 standard that Texas argued for at the liability phase, and it
13 was rejected by this Court and the Fifth Circuit.

14 Voters who face a barrier to obtaining SB 14 ID that
15 might be overcome with substantial personal sacrifice are being
16 told that they cannot vote and that they cannot obtain SB 14
17 ID, and the language that the State is using will deter those
18 voters from attempting to come to the polling place and
19 attempting to vote under this Court's remedial order.

20 Second, the State has replaced the term "do not
21 possess" with the term "has not obtained" SB 14 ID. This order
22 applies to voters who currently do not possess SB 14 ID, and a
23 question of whether a voter has ever obtained ID in the past is
24 separate and here irrelevant for whether or not that voter
25 should be able to vote under the remedial order.

1 Voters who have obtained ID in the past that have
2 lost it, have had it stolen, have surrendered it to the State
3 or who have let it expire by more than four years may vote
4 under the Court's remedial order, even though they have
5 obtained ID. The language of the State's verification
6 materials is instructing them to the contrary.

7 More to the point, the State has no basis to deviate
8 from the clear language of the Court's remedial order. On
9 August 10th, the Court rejected the State's request to upset
10 the balance negotiated between the parties by adding additional
11 language for reasonable impediment declaration. Now the State
12 has simply removed a term from this Court's order, paragraph
13 11, regarding voter education and did not even request leave
14 from the Court. They should not be permitted to alter this
15 Court's order by fait accompli.

16 In response, Texas has provided no plausible reason
17 why its further education and voter education documents cannot
18 simply conform to the remedial order. Rather, it has presented
19 three contradictions to the Court. First, it has described the
20 language of the Court's order as both clear and ambiguous. On
21 August 10th, the State stated that, quote, defendants want
22 clear and definable terms in the Court's order to provide them
23 confidence that they are, in fact, complying with the Court's
24 order. The State went on to say, quote, the terms set forth in
25 the joint submission of agreed terms and specifically the

1 requirements set forth in paragraphs 10 through 12 are
2 appropriate.

3 The State now claims that that same language is
4 ambiguous and suggests a replacement to that language that has
5 not been agreed upon by any party. And it is not clear if that
6 language is ambiguous, how the language that the State has
7 presented is somehow also clear and consistent, which leads to
8 the second contradiction.

9 The State has claimed that the language it has
10 presented is consistent with the Court's order and yet states
11 the Court's order is somehow confusing. If they are the same
12 language in substance, then there is no reason for the State to
13 insist on changing the language of the Court's order. And if
14 it's confusing, the State cannot now claim that the language it
15 has presented instead is certainly consistent with the Court's
16 order. There's a difference in substance. There's a reason
17 why the State is insisting on changing the language. The
18 language cannot be consistent between the clear language of the
19 Court's order, and it cannot obtain language of the State's
20 educational materials.

21 Finally, the State has claimed that there are a
22 number of voters who are unable to obtain SB 14 -- or excuse
23 me, that there are no voters who are unable to obtain SB 14 ID
24 for purposes of Section 2, and yet it claims that that same
25 language can be used to define the scope of the reasonable

1 impediment declaration. The State maintains in its response to
2 the United States' motion that Plaintiffs failed to identify
3 the individuals who faced a substantial obstacle in voting. If
4 they cannot obtain standards governed, then that would suggest
5 that the plaintiffs have failed to identify individuals who
6 cannot obtain SB 14 ID and can then use a reasonable impediment
7 declaration. That was clearly not what was intended by this
8 Court.

9 The United States respectfully requests the Court
10 order the State to use the negotiated language which implements
11 this Court's remedy. And the United States has requested a
12 remedy that is reasonable and possible. With regard to
13 electronic documents, the United States has requested that they
14 be modified and recirculated electronically.

15 With regard to documents that have already been
16 printed, we have not asked that they be reprinted. We have
17 asked that corrections be issued and be used to supplement
18 those printed materials. The fact that the State would incur
19 costs to correct mass media campaigns cannot preclude a remedy
20 here. The State was aware of the standard. The Plaintiffs
21 made the State aware of the problem of deviating language, and
22 the State (indiscernible) commercials and sent out to print
23 publications anyway.

24 The State has claimed in its opposition that it's too
25 late to correct these materials; however, Secretary of State

1 Cascos told the Austin American-Statesman in an article that
2 was published yesterday, quote, we're pretty flexible. If the
3 Court comes back and says we need to change something, then we
4 will do that.

5 To protect voters and to ensure an effective remedy,
6 the United States respectfully requests that this Court do just
7 that. I'm happy to take any questions that the Court has now.

8 **THE COURT:** Okay, thank you. Mr. Rosenberg.

9 **MR. ROSENBERG:** Yes, I'll just be very brief in
10 support of this motion, and then I don't know, Your Honor, if
11 you want me to continue with ours or if you want to hear the
12 State on the first motion. But very briefly, and I'd like to
13 direct my comments primarily to this -- the issue of the "have
14 not obtained" or "cannot obtain" language. Because the State
15 actually concedes in its brief at page 10 that there is a
16 difference between the "have not obtained" language and the
17 "does not possess" or "does not have" language, which DOJ and
18 the private plaintiffs argue is more accurate.

19 So the only issue is which of those two sets of
20 language, the obtained language or the possess or have
21 language, more accurately reflects Your Honor's interim
22 remedial order. And it's not even a close question, Your
23 Honor.

24 The Fifth Circuit decision spoke in terms of people
25 who do not have SB 14 ID. Your Honor's orders ECF 859 and 895,

1 which is the interim remedial order; however, 6 and 10 spoke
2 solely in terms of possession or having SB 14. The
3 instructions to the declaration of reasonable impediment
4 specifically talk only in terms of does not possess SB 14 ID.
5 Defendant's brief, at pages 18 and 19, where they're not
6 directed to DOJ's motion but rather to private plaintiffs'
7 motion, spoke only in terms of possession or having SB 14 ID,
8 and Attorney General Paxton's statement to Fox News
9 specifically talked only in terms of do not have SB 14 ID.

10 So, Your Honor, respectfully, it is not even a close
11 question. The State has concocted this obtained language,
12 which as DOJ explained in its brief, really distorts what the
13 interim remedial order is all about.

14 And finally, as an aside, any argument that there was
15 a failure on behalf of the plaintiffs to object to this, it's
16 completely a false argument. Between August 11th and August
17 20th -- August 30th, there were at least ten occasions where
18 private plaintiffs and/or DOJ specifically objected to this
19 "obtain" language.

20 And that's all I have to say on this. If Your Honor
21 has any questions. And again, if you'd like me to address our
22 motion or if you would rather hear from the State first on
23 DOJ's motion.

24 **THE COURT:** Why don't you go ahead and address your
25 motion, and then the State can just address both of them at the

1 same time.

2 **MR. ROSENBERG:** Sure. Your Honor, our motion for
3 additional relief is based upon statements attributed to state
4 and county officials, specifically to Attorney General Paxton
5 and to Stan Stanart, the Harris County clerk, which we submit
6 are contrary to the interim remedial order terms and have had,
7 and will continue to have, an intimidating and chilling effect
8 on voters who are eligible for use of the declaration of
9 reasonable impediment.

10 We have asked for very limited but necessary relief
11 to ameliorate that harm to the extent that is possible, and in
12 some cases may not even be possible for all voters at this
13 time, and I'll get to that in a few minutes.

14 The initial response that the State makes in response
15 to this motion is that there's no proof that Mr. Stanart
16 actually made the statements that were attributed to him in the
17 media. They don't dispute that Mr. Paxton made the statements
18 that -- Paxton made the statements that he's alleged to have
19 made. They don't dispute that Mr. Stanart did likewise, both
20 of whom raised this prospect of perjury investigations and
21 perjury prosecutions of those who are executing the declaration
22 of reasonable impediment. And they don't dispute that the
23 statements that are paraphrased, and that's their only defense,
24 that these are paraphrased statements, not in direct quotes,
25 that are paraphrased as to Mr. Stanart, are completely

1 consistent with the quoted statements of Mr. Stanart and the
2 statements that he is quoted to have made in other
3 publications.

4 Now, we gave the State an opportunity to confirm
5 whether or not Mr. Stanart made those statements, and they
6 declined to do so. In fact, they said they don't have control
7 over Mr. Stanart, and for reasons of their own decided to say
8 that, and, by the way, the Montgomery County Democratic party
9 is making inaccurate statements also. I guess implying that
10 two wrongs may make a right. Because the State did not
11 indicate that they were going to do anything about inaccurate
12 statements that were being made by -- in public messaging of
13 the Montgomery County Democratic party, we contacted them, even
14 though we have no control over them; and as a result, they did
15 change their public messaging to make it more accurate.

16 In fact, we have done that with some 88 counties, of
17 whom 45 have changed their public messaging, even though we do
18 not have control over them. But apparently the State did not
19 think it was their responsibility, even though Your Honor's
20 interim remedial order expressly places responsibility on the
21 State to make sure that the messaging to voters and the
22 messaging to election officials is accurate and consistent with
23 the interim remedial order.

24 Now, there's been, I guess, more than two weeks that
25 have passed since we asked the State to confirm whether

1 Mr. Stanart made those statements. The State has not confirmed
2 it, and, more important, they've not disclaimed that those
3 statements are not consistent with the terms of the interim
4 remedial order. And the fact is the reason they've not done
5 that, and this is really the crux of our motion, is because
6 they actually agree with those statements, and they do not feel
7 that those statements are intimidating.

8 And, Your Honor, it defies common sense to take the
9 position that statements by County officials to the effect that
10 all persons are going to be investigated who sign a declaration
11 of reasonable impediment or possible perjury investigation,
12 perjury prosecutions, and may be turned over to the district
13 attorney and their names are going to be put through databases,
14 to suggest that that does not have an intimidating or chilling
15 effect really defies common sense. And particularly in this
16 situation where the people who are intended to be protected by
17 Your Honor's interim remedial order are some of the most
18 vulnerable in our society. They are predominantly poor, they
19 are minority populations who have been subjected to
20 discrimination and intimidation and threat in voting for
21 decades in the state of Texas.

22 It's self-evident that statements that they may be
23 prosecuted or investigated for signing a declaration will not
24 have a chilling effect. And, in fact, we've submitted
25 declarations to the effect, one from Juanita Cox, from Lupe,

1 another from Oliver Hill, from the San Antonio branch of the
2 NAACP, each of which confirms that there already has been an
3 intimidating and chilling effect.

4 And I can represent to Your Honor that we could have
5 had more affidavits, but we did not feel that it was necessary
6 to burden the Court with something as self-evident. In fact,
7 to use the expression that Mr. Hill did in his affidavit, it's
8 mind-boggling that the State does not understand that those
9 statements can have an intimidating effect.

10 The statements not only have an intimidating effect,
11 but they violate the interim remedial order. The interim
12 remedial order was specifically crafted so as to prevent this
13 sort of intimidation. For example, and as Mr. Freeman just
14 mentioned, Your Honor specifically rejected a request by the
15 State, and that was in ECF 879, to have the sworn statement
16 amended so as to include a statement that the declarant does
17 not have SB 14 ID. And as a result, there are only two things
18 that were in the -- in the declaration. One is a statement of
19 reasonable impediment, and the other is a statement that the
20 voter is who he says he is. And only that latter statement,
21 that the voter says he is who he says he is, is a material
22 statement for purposes of judging the declaration. Because the
23 declaration of reasonable impediment says in full text, right
24 above the signature, that the reasonableness of your impediment
25 or difficulty cannot be questioned, and that's what the voter

1 sees before he or she signs the declaration of reasonable
2 impediment.

3 So as to give the impression otherwise violates the
4 interim remedial order. To give the impression also and to
5 deny that a person who signs the declaration of reasonable
6 impediment in good faith, believing that he or she does not
7 have SB 14 ID and has a right to execute the declaration is
8 also contrary to the law. I don't want to even -- I don't
9 think it's necessary to talk about the criminal statutes, but
10 the fact is in Texas, under Section 37.02 of the criminal code,
11 you cannot prosecute someone for false statements unless there
12 is intent to deceive and unless there's knowledge that the
13 statement is false.

14 And that has particular resonance in the context of
15 this declaration, because as we've discussed in the papers that
16 we've submitted, there are studies, including studies from Rice
17 University, that shows that there are many people who believe
18 they do not have photo ID when, in fact, they do have photo ID.
19 And to threaten and investigate and punish people under those
20 circumstances, where it is very easy to be mistaken, is really
21 unconscionable and contrary to the terms and the intent behind
22 the interim remedial order.

23 It's also particularly appropriate here to stop this
24 sort of nonsense, Your Honor, because one of the things that --
25 another one of the remedial aspects to the interim remedial

1 order was the expansion of SB 14 IDs to include IDs that may
2 have expired up to four years before the date of the election.
3 And that could increase the possibility that people's IDs
4 perhaps have been misplaced, they think they may not have the
5 ID, when, in fact, they have the ID because it's been so long
6 since they even looked at it. And to then suggest, as
7 Mr. Stanart is attributed to have suggested, that you can put
8 the names of these people into a database, and if it pops up
9 that they have an SB 14 ID that had been issued to them at any
10 time prior to the election, really increases the possibility
11 that there may be mistakes. And that's the sort of thing that
12 someone should not have the fear of when they're signing a
13 declaration when the only thing they're trying to do is vote
14 and they're the person who they say they are.

15 One last point along these lines also is the admitted
16 misstatement by the attorney general to the effect that the
17 declaration of reasonable impediment calls for an oath and
18 proof of citizenship. That obviously is not so and that is
19 another thing that should be -- should be corrected.

20 Your Honor, at this point what I can only describe
21 as, I think, somewhat careless remarks of officials, obviously
22 dissatisfied with this Court and Fifth Circuit's rulings, have
23 already had a, perhaps, irreversible impact on some of these
24 people, some of the people whom Your Honor was trying to
25 protect, and these people may simply not vote. But to allow

1 these statements, statements that have not been disclaimed by
2 the State, not been disclaimed by Mr. Stanart, even though
3 they've had weeks and weeks to do so, to have a further
4 chilling effect may undermine totally the remedial release that
5 this Court has ordered. And it would be very depressingly
6 ironic if the remedial structure that was negotiated so
7 carefully by the parties and approved by this Court to diminish
8 the discriminatory impact of SB 14 were used to trap unwary
9 intended beneficiaries of this Court's remedy.

10 The interim remedial order was intended to help
11 people vote, not to scare them away, and this Court should
12 issue relief that is necessary to assure them, to assure the
13 voters, and to educate the election officials that if the
14 voters execute a declaration of reasonable impediment because
15 they, in good faith, believe that they do not have SB 14 ID, so
16 long as they are who they say they are, they will not be
17 subject to investigation and prosecution.

18 I'm happy to take any questions, Your Honor.

19 **THE COURT:** All right, thank you. I'm going to allow
20 the State to respond if no one else is speaking for the
21 plaintiffs at this point. Ms. Colmenero.

22 **MS. COLMENERO:** Thank you, Your Honor. We will begin
23 by responding first to the United States' motion to enforce.
24 And there are two points the State would like to make in
25 response: First, the language the State has used in its voter

1 education and training materials is consistent with the Court's
2 order. The purpose of the interim remedial order is to
3 accommodate voters who are unable to obtain a form of SB
4 14-compliant ID due to a legitimate impediment, such as a
5 financial barrier to obtaining an acceptable photo ID.

6 Relying on the language in the reasonable impediment
7 declaration, the State drafted guidance that it believed
8 accurately explains the new voting procedures and who was
9 eligible to utilize the declaration to cast a regular ballot.
10 The reasonable impediment declaration itself states that a
11 person must state he faces a reasonable impediment or
12 difficulty that prevents him from getting an acceptable form of
13 photo identification.

14 Based on this language, the State chose language that
15 would convey to voters that not having obtained a form of SB 14
16 ID is one of the prerequisites, and the existence of a
17 reasonable impediment to obtaining such an ID is the other
18 requirement. And it chose to use the word "obtain" because it
19 is a synonym to "getting," which is used in the reasonable
20 impediment declaration itself.

21 The United States complains about the fact that the
22 word "reasonable" or "reasonably" do not appear on three
23 voter-facing documents. These include votetexas.gov home page,
24 the secretary of state's press release issued on August the
25 19th, and on the poster that is located outside the polling

1 places. The United States contends that by omitting the word
2 "reasonably" from these three sources, the State has rewritten
3 the language of the interim remedial order by suggesting that
4 individuals can only use the reasonable impediment declaration
5 if obtaining SB 14 is impossible. This interpretation of the
6 State's education and training materials is misguided.

7 While the State admits that the word "reasonable" or
8 "reasonably" does not appear on the home page of votetexas.gov,
9 there is an icon on the lower left-hand side of the website
10 that's called "Voter ID FAQs." If a visitor clicks on that
11 portion of the website, they are led to another web page with
12 very detailed information about the voter ID procedures and how
13 the reasonable impediment declaration process works. This is
14 labeled as Exhibit E of the State's response.

15 This language in the FAQs clearly uses the word
16 "reasonable" every time the declaration (indiscernible) and
17 offers the following instructions to the public: Voters who
18 have not been able to obtain one of the forms of acceptable
19 photo identification listed below and have a reasonable
20 impediment or difficulty to obtaining such identification, may
21 present a supporting form of identification and execute a
22 reasonable impediment declaration.

23 References to reasonable or reasonably are sprinkled
24 throughout these FAQs, which, if the Court recalls, were the
25 first substantive update made by the State on the website back

1 on August the 12th, after the entry of the Court's interim
2 order.

3 The same is true with respect to the press release
4 that the United States complains about. The title of the press
5 release does not have the word "reasonable" or "reasonably."
6 The text of the press release makes clear that a voter who has
7 not been able to obtain one of the seven forms of photo ID can
8 sign a declaration providing a reason why at the polls and cast
9 a regular ballot. There is nothing about this statement that's
10 inconsistent with the Court's order, and the press release also
11 directs individuals to the votetexas.gov website for more
12 information.

13 Finally, the United States complains for the first
14 time in its reply brief about the poster located outside the
15 polling locations that is required under Section 62.016 of the
16 Texas Election Code. Like the press release, their message to
17 the voter is if you can't obtain one of the seven forms of ID,
18 you can fill out a declaration at the polls explaining why and
19 bring the supporting documents.

20 And so the State believes that really this dispute
21 boils down to the fact is the omission of the word "reasonably"
22 or "reasonable" from three of these documents and a
23 hypothetical situation posed by the United States and the
24 private plaintiffs regarding a specific category of individuals
25 who may need to utilize the reasonable impediment declaration,

1 and these individuals include those who may have lost their ID,
2 had their ID stolen, had their ID suspended or revoked. And in
3 other aspects of the State's guidance, specifically in Exhibits
4 A through D that are attached to the State's response, those
5 scenarios are specifically addressed in terms of how election
6 officials will handle individuals at the polls who arrive who
7 have had an ID lost, stolen, suspended or revoked.

8 But even though the State believes its language in
9 all of the documents is consistent, it wants to propose a
10 solution to resolve the dispute without causing major
11 disruption to the voter education campaign that is currently
12 underway. And so with that, the State proposes that to the
13 extent that there is any ambiguity relating the specific
14 category of individuals -- and I'll call them the lost, stolen,
15 suspended or revoked category of individuals -- we can easily
16 amend the FAQs on the voter ID -- voter ID procedures web page
17 to include a reference to this category of individuals to make
18 clear that those individuals could qualify for the reasonable
19 impediment declaration if they have a reasonable impediment --
20 if they can demonstrate they have a reasonable impediment or
21 difficulty to obtaining a new form of ID.

22 So we think that that solution would, in fact,
23 address the very concerns that are raised as the United States'
24 motion sets forth, as well as the ones raised by the private
25 plaintiffs.

1 The United States' suggestion that the State's
2 language excludes individuals who may have lost their ID from
3 the interim remedy because they have already obtained an ID but
4 they just do not possess it, once again, the United States
5 ignores that language in the State's guidance, which provides
6 instructions to individuals who may fall into this category.
7 And we direct the Court to the very guidance that is already --
8 has already been disseminated to election officials across the
9 state.

10 Election officials are instructed to ask individuals
11 at the polls two questions: One, have you obtained an
12 acceptable photo ID; and two, if the answer to that question is
13 no, then the official is required to ask, do you have a
14 reasonable impediment or difficulty to obtaining one. And if
15 the answer to Question 2 is yes, then the voter is presented
16 with a declaration to fill out, and at that point the
17 reasonableness of his impediment cannot be questioned and he is
18 allowed to cast a regular ballot.

19 The qualifying voter's handbook, which goes to
20 election officials, includes a specific reference to lost,
21 stolen, suspended or revoked IDs to address the very situation
22 the United States is concerned about. The same instructions to
23 officials also appear in Exhibit F, which is the PowerPoint
24 sent to election officials in August, as well as in Exhibit G,
25 which is the elections advisory that was sent to election

1 officials at the end of August.

2 The State's language is not inconsistent with the
3 Court's order or the Fifth Circuit's opinion, and we are not
4 trying to resurrect an argument that we lost before the Fifth
5 Circuit by using the "unable to obtain" language. The State
6 argued on appeal that SB 14 did not violate Section 2 because
7 the plaintiff failed to identify individuals who face
8 substantial obstacles to voting because of the voter
9 identification requirement, but this argument is completely
10 unrelated to the current dispute.

11 Finally, although in this reply brief the United
12 States has focused on the omission of the word "reasonably"
13 from three voter-facing documents, the State will also address
14 the other proposed language by DOJ, which includes substituting
15 the "cannot obtain language" or the "unable to obtain" language
16 with the "do not possess" language.

17 The United States has also suggested that the State
18 modify all of its other guidance to changes to the "do not
19 possess" phrase. The State admits to the Court's order and the
20 declaration itself obtain references to obtain as well as to
21 possess, but it chose to include the word "obtain" in its
22 guidance in order to make it clear to voters and to election
23 officials that the declaration itself is not a convenience
24 document, and the State's guidance has not been restrictively
25 enforced to the detriment of those who are eligible for the

1 reasonable impediment declaration. Instead, the State has seen
2 that the declaration is being liberally used by those
3 individuals who it is not even intended to protect. These
4 includes individuals who left their ID at home, as well as
5 individuals who are simply refusing to show their ID. And we
6 have attached examples of this to our response to the motion to
7 enforce.

8 And the reason this is significant is because once a
9 person says that they have a reasonable impediment declaration
10 and is presented with the declaration, the legitimacy of the
11 impediment cannot be questioned. As a result, the last thing
12 the State desires is to provide lenient guidance in light of
13 what we have seen and encourage the improper use of the
14 reasonable impediment declaration.

15 Second, we believe that the motion to enforce should
16 be denied because making changes at this point in the election
17 cycle would, in fact, require a massive overhaul of voter
18 education materials at a critical time. There are less than 60
19 days before the general election, 50 to be exact, and United
20 States contends that it is only requesting corrections to
21 materials that have not yet been printed, along with the
22 distribution of corrections where materials have already been
23 printed.

24 Basically, in our world this means everything SOS has
25 done since August the 10th would need to be redone in order to

1 insert the word "reasonably" where the United States believes
2 it should go or include a totally new phrase into the guidance.
3 This is significant because guidebooks and handbooks have been
4 distributed to election officials throughout the state. Those
5 counties are in the process of hosting their only specific
6 training based on the new guidance, and there is great
7 ramification of redoing the current version of the media
8 campaign. This includes any changes to a TV script, as well as
9 to radio broadcast spots, as well as to the digital ad campaign
10 on social media. The digital and social ads are already
11 running and are using the language of a poster that we sent to
12 the plaintiffs for their review and comment on August the 11th,
13 and that poster does, in fact, include the "unable to obtain"
14 language, and they never raised an objection to that particular
15 language.

16 We have also distributed the toolkit, and that
17 distribution began on September the 2nd. They have been
18 distributed to 798 elected officials across the state. They've
19 also been distributed to over 1,000 community organizations.
20 And the secretary of state's office has already completed
21 production of its television commercial, and any change in the
22 current guidance may require them to have -- may require them
23 to revise the current version of it, send the entire production
24 team back into the studio to re-record this, and the State is
25 going to lose money if it cancels the media spots it has

1 already purchased. And in particular, the State has already
2 identified that it will lose about \$140,000 in placements and
3 over 14 million impressions in the media.

4 So making changes now would bring the State's
5 election machinery to a halt in order to make an unnecessary
6 change and one that the United States could have raised over a
7 month ago, and it could cause unnecessary confusion with such a
8 short time before the general election.

9 So in conclusion with respect to the United States'
10 motion to enforce, we believe that it's really premised on a
11 hypothetical scenario that someone who has a lost, stolen,
12 suspended or revoked ID may think that they do not qualify for
13 the reasonable impediment declaration because they have already
14 obtained an ID but they may not physically possess it at the
15 time of voting.

16 Significantly, there's no evidence that anyone has
17 been denied the right to cast a regular ballot in an election
18 thus far based on the hypothetical scenario the United States
19 has proposed; but as the State has explained and the questions
20 the election officials are instructed to ask, this scenario
21 should be covered and allow these individuals to demonstrate
22 that they have a reasonable impediment or difficulty to
23 obtaining a photo ID and possibly sign a declaration.

24 There does not need to be a massive overhaul of voter
25 education and training efforts. At the very least, the State

1 can make a modification to FAQs to address this exact scenario
2 that's being raised here. For these reasons, the State
3 respectfully requests that the Court deny the United States'
4 motion to enforce.

5 And, Your Honor, I can move to the next -- to the
6 private plaintiffs' motion to enforce unless you have questions
7 related to the first one.

8 **THE COURT:** Go ahead and finish up your argument.

9 **MS. COLMENERO:** Thank you. The private plaintiffs'
10 motion is premised on statements by two Texas officials, the
11 Harris County clerk, as well as the attorney general, which
12 allegedly state that they will conduct a wholesale criminal
13 investigation of everyone who executes the reasonable
14 impediment declaration. The Court should deny the motion to
15 enforce, because, one, there's no evidence that the Texas
16 officials made such a statement; and two, the public quoted
17 statements actually made by these officials do not conflict
18 with the Court's interim order.

19 The plaintiffs' motion is premised on the statements
20 made by the Harris County clerk, and they take offense to
21 language that appeared in an article by the Houston press, but
22 the precise language Plaintiffs complained about is not even a
23 direct quotation from Mr. Stanart. It comes from a reporter
24 and is, therefore, unclear whether it is even attributed to
25 something Mr. Stanart said.

1 The other direct quotations from Mr. Stanart that are
2 identified in the article are, in fact, consistent with the
3 interim remedy order. These statements state that if he
4 suspects someone has fraudulently signed a form saying they do
5 not have an ID, it will be up to the DA's office to determine
6 the next step. His statements confirm that voters who have SB
7 14 ID must present it when voting in person, and his statements
8 confirm what is already in the reasonable impediment
9 declaration, that is, a voter must swear and affirm under
10 penalty of perjury that he faces a reasonable impediment that
11 prevents him from getting an acceptable form of ID.

12 The Court should reject the plaintiffs' suggestion to
13 add a good faith exception to the Court's interim order. The
14 interim remedy applies to voters who do not have an acceptable
15 photo ID or the means to obtain one before the election, but
16 voters who mistakenly believe they lack an acceptable form of
17 ID have not suffered any harm as a result of SB 14. They are
18 not the intended beneficiaries of the reasonable impediment
19 declaration, and Plaintiffs' suggestion and language in their
20 proposed order would inform voters that they may execute a
21 reasonable impediment declaration even if they have a
22 qualifying photo ID. This would create confusion 60 days
23 before the election and send a conflicting message out based on
24 the guidance the State has already issued.

25 The last statement the plaintiffs complain about is

1 that the attorney general has failed to correct press
2 statements that the interim remedial order requires a
3 declaration of proof of citizenship and proof of residency at
4 the polling place. This statement is immaterial at the end of
5 the day, even though it may have been technically incorrect,
6 and specifically it was not a response made by the attorney
7 general. It was a question posed by the reporter. And the
8 reason this statement is immaterial is because the election
9 code requires in-person voters to verify their residence if
10 that listed in the voter rolls is not current, and every voter
11 in the country on the federally prescribed mail-in voter
12 registration form has to attest under penalty of perjury to
13 their citizenship under federal and state law.

14 And for these reasons, Your Honor, we request that
15 the State deny the private plaintiffs' motion to enforce as
16 well.

17 **THE COURT:** All right, is that it from the State?

18 **MS. COLMENERO:** Yes, Your Honor.

19 **THE COURT:** It's never a good idea to alter language
20 that's in a court order, right? Why did the State not follow
21 the language in the order?

22 **MS. COLMENERO:** Well, Your Honor, we believe that we
23 did follow the language in the order.

24 **THE COURT:** No, no. I think you agreed that you say
25 it's consistent, it differs slightly. So all I'm saying, it's

1 never a good idea to start messing with language in a court
2 order, so I'm just not sure why the State did that.

3 **MS. COLMENERO:** The reason that the language appears
4 in the guidance the way that it does is we were trying to
5 provide clear instructions to the voter, as well as the poll
6 worker in terms of the inquiry that will be made at the polling
7 location regarding the use of the reasonable impediment
8 declaration. While the Court's order did use the possess
9 language, during the meet and confer process with the private
10 plaintiffs, there was a lot of back and forth as to whether or
11 not we should use does not have, does not possess. Does not
12 obtain, from our perspective, also was a synonym to the
13 language that appeared in the reasonable impediment declaration
14 itself and provided the clearest message, from our perspective,
15 to the voter, as well as to the election official, in terms of
16 how to utilize the reasonable impediment declaration.

17 **THE COURT:** But you guys agreed on the language, and
18 obviously you all agreed to it after this back and forth on it.
19 So I'm still not clear why the language that was agreed to and
20 incorporated into the Court's order, why that wasn't used.

21 **MS. COLMENERO:** The reason that the State did not use
22 the exact language in the Court's order is because we were
23 looking for a better term than the word "getting" that was used
24 in the reasonable impediment declaration, and we wanted to use
25 something that was more clear and concise than the language

1 that appeared in the reasonable impediment declaration itself,
2 which is why we went with "obtain."

3 **THE COURT:** I'm sorry, that's not a good answer. I
4 mean, if you have a court order with language in it, you just
5 unilaterally changed it, and now we're all thrown into this
6 mess here. I mean, that being said, if I look at the big
7 picture, if I'm looking at cannot obtain it, cannot reasonably
8 obtain, the SB 14 ID is what we're talking about, what's in
9 the -- I guess the training guides, from what I can tell for
10 the election workers, when you read that as a whole with the
11 language, it's together with language regarding the reasonable
12 impediment declaration, et cetera, it's not ideal, but that's
13 all together.

14 What concerns me is when we're using this cannot
15 obtain it language standing on its own, which is exactly what
16 the Government is bringing up on the votetexas.gov, the posters
17 that are supposed to be posted outside the polling place.
18 That's a problem because that's just standing on its own. And,
19 okay, so you say, well, there's this little icon they can go
20 to. That's on a different page. That, what's getting out to
21 the public, what's actually getting out to the voters, when you
22 just have cannot obtain it, that is misleading.

23 **MS. COLMENERO:** Well, so, Your Honor, I believe the
24 references you're making only appear three times, and that
25 would be -- the votetexas.gov home page does not have the word

1 "reasonable" anywhere, and it, frankly, has a scrolling banner
2 across the top that is linked to the secretary of state's press
3 release that scrolls across it.

4 So I think out of the three that you've identified,
5 the poster on the polling location is the one that has the
6 "cannot obtain" language. It does not have the word
7 "reasonably" inserted between there or anywhere on the
8 document. However, it does direct the voters to go to
9 votetexas.gov, which is why -- I mean, voter ID FAQs, which is
10 the most comprehensive interpretation of the new voting
11 procedures by the secretary of state. The State is prepared to
12 add a new FAQ on there to address the hypothetical scenario
13 proposed here regarding the lost, stolen, suspended --

14 **THE COURT:** You need to update with the word
15 "reasonable" because that's what the order said, correct? And
16 it's also in the press releases, the headline. What's the
17 headline, cannot obtain. That's misleading. That's not what
18 the Court's order said, correct? And you all agreed to this.
19 You all agreed to the language. I didn't force it down your
20 throat.

21 **MS. COLMENERO:** If I could address both of those
22 points separately, Your Honor. The poster itself, adding the
23 word "reasonably" in between "cannot" and "obtain," the State
24 can make that -- that modification for the polling location
25 poster.

1 Second, with respect to the press release that's
2 issued by the -- was issued by the secretary of state, we do
3 not believe that when you actually go to the language in the
4 press release itself --

5 **THE COURT:** I'm not talking about the language. I'm
6 talking about the headline, what grabs whoever is reading it.
7 When they see that, that's misleading. Right?

8 **MS. COLMENERO:** We respectfully disagree with that,
9 Your Honor, and we believe that the language of that press
10 release has been -- has been out there since October -- I'm
11 sorry, since August the 10th, as soon as the Court issued its
12 interim remedial order.

13 **THE COURT:** It doesn't matter how long it's been out
14 there.

15 **MS. COLMENERO:** But we don't believe that the press
16 release is inconsistent because it makes clear that the voter
17 cannot obtain one of the seven forms of ID.

18 **THE COURT:** I think we're talking past each other.
19 I'm talking about the headline.

20 **MS. COLMENERO:** Well, but the headline itself just
21 directs people to the press release itself, which provides the
22 explanation, which is what has been reprinted and I --

23 **THE COURT:** It's misleading, ma'am. You can't do
24 anything about it?

25 **MS. COLMENERO:** Your Honor, we are not prepared to

1 change the heading of the secretary of state's press release.
2 On our own, we don't believe it's inconsistent, so we
3 respectfully disagree; but if the Court orders us to do so, we
4 will change it.

5 **THE COURT:** Well, you're so ordered. I just think
6 when it's standing alone, that's what I'm talking about. When
7 they cannot reasonably obtain the SB 14 ID, when that stands
8 alone, it is misleading. I'm kind of -- even though it's not
9 ideal, I'm saying when the State talks about that relation to
10 the language when it's together with the reasonable impediment
11 issue, that although not ideal, that's already in the training
12 manuals, we're going to have to roll with that. But I don't
13 see how when the language stands alone, how that would not be
14 misleading.

15 **MS. COLMENERO:** Well, Your Honor, now that you've
16 ordered us to make the change, we will move forward with that
17 change.

18 **THE COURT:** Okay, so what has been done with the
19 media, I guess? I mean, I really think the State put us in
20 this situation by not using the language in the court order,
21 and I still can't quite tell why that was. So really, what is
22 the State's suggestion, then, as to what we should do? I have
23 ordered the language, I guess, in the three separate documents,
24 the votetexas.gov, press release, the posters that are to be
25 posted at the polling places to be correct, to reflect the word

1 "reasonably" or "reasonable," right? So what else can the
2 State do at this point where we are now? Obviously anything
3 going forward needs to have the exact language of the order.

4 **MS. COLMENERO:** There are three different aspects to
5 the media campaign that are relevant here. The first is the
6 digital media messages that are being put forth over social
7 media. Those contain a link to a poster, or I'll call it a
8 print advertisement, is more specific, that does, in fact, have
9 a statement on there that says if a voter is unable to obtain
10 one of these IDs, you can fill out a form saying why and
11 present one of the supporting forms of identification.

12 So the issue with the print advertisement is that
13 that print advertisement has already been sent to publication
14 for several newspapers for the first week of October. So it is
15 too late for us to call those back and still maintain the media
16 spots that the State has previously purchased. And -- and --
17 so that's one aspect of it.

18 The other aspect would be on the television and radio
19 commercials, which would require -- they're still in the
20 postproduction phase, but it would require the State to
21 re-record certain audio to include the word "reasonably." If
22 there is a delay in terms of -- in the next couple of days, we
23 will lose the media spots that we have --

24 **THE COURT:** Ma'am, I guess it's just not clear as to
25 what's being said on the TV, radio, on the print. What is it?

1 Is it just this language that's not explained with anything
2 else? I don't know what you have. I don't know what's being
3 put out there.

4 **MS. COLMENERO:** Yes, Your Honor, I will specifically
5 read it for you. Just give me one second so I can pull up the
6 latest version. I'm sorry, I'm having a little bit of computer
7 problems. Give me one second.

8 **THE COURT:** Okay.

9 **MS. COLMENERO:** The language that we -- that will
10 appear in the digital advertisements on social media is -- will
11 say unable to obtain one of these IDs, and I'm paraphrasing
12 from the whole poster.

13 **THE COURT:** Okay.

14 **MS. COLMENERO:** And it says, if you have a reasonable
15 impediment or difficulty in obtaining an approved -- an
16 approved photo ID, fill out a declaration at the polls and show
17 one of the following supporting documents. So within that
18 language itself, it uses a reference to the word "reasonably"
19 and when it's talking about the reasonable impediment or
20 difficulty to obtaining the photo ID.

21 **THE COURT:** Okay.

22 **MS. COLMENERO:** With respect to the radio and the
23 television commercials, those are 30-second time spots. I do
24 believe that it talks about -- and I have not seen the
25 finalized language of those because they are in the

1 postproduction phase, but I believe it contains the reference
2 to the word -- a similar description of unable to obtain a form
3 of ID, fill out a declaration explaining why, and show one of
4 the seven forms of supporting identification.

5 **THE COURT:** Does it talk about reasonable impediment?

6 **MS. COLMENERO:** I don't believe that one of the
7 versions I saw spoke about reasonable impediment listed in
8 there. It was more of a layman's terminology, since these are
9 going to the mass public, which was unable to fill out --
10 unable to obtain an ID, fill out a form explaining why.

11 **THE COURT:** But that's a problem, right? I mean,
12 that's exactly what the plaintiffs are addressing here. Okay.

13 **MS. COLMENERO:** The State does not believe that that
14 is a problem or would be confusing to anyone. That's our
15 position.

16 **THE COURT:** Okay.

17 **MS. COLMENERO:** Then there is the newspaper
18 advertisement that will contain a similar poster to the one
19 that I just described that is also being uploaded on social
20 media sites, the same as the digital advertisement.

21 **THE COURT:** That contains a reasonable impediment
22 language?

23 **MS. COLMENERO:** Yes, it does.

24 **THE COURT:** Okay. Mr. Freeman, do you want to
25 respond, then I'll let Mr. Rosenberg.

1 **MR. FREEMAN:** Sure. Thank you, Your Honor. We
2 certainly agree with the Court that it remains unclear why the
3 State refused to use the language of a reasonable impediment --
4 or, I'm sorry, the remedial order, and we appreciate the
5 Court's order. We are concerned that the State has,
6 essentially, tried to run out the clock here and then pulled a
7 it's too late. And we would ask the Court, respectfully
8 request the Court order the State to provide scripts and copies
9 of materials to the Court to make sure that these materials are
10 going to comply with the Court's original order.

11 We agree with the Court that language such as cannot
12 obtain and then asking the voter to give us a reason why is
13 distinct from the reasonable impediment language in the Court's
14 remedial order. And that's the language even in the substance
15 of the press releases that's still there. And so we would
16 request that the Court direct the defendants to modify not only
17 the headline, but also the substance of those press releases,
18 and to reissue them and make sure that the voters and the media
19 are aware of the actual standard that's at issue.

20 We think that it's necessary, as you requested, Your
21 Honor, in your initial motion that there be a broad order
22 directing the State to obey the remedial order accurately to
23 voters going forward, and I think the Court hit the nail on the
24 head when it said that especially language in isolation, so
25 headlines of press releases that don't provide any context,

1 they need to make sure they include the word "reasonably."
2 We're, obviously, not aware of the exact relationship between
3 the State and its printers and radio, but we would hope that
4 the State is going to be able to -- is going to be printing
5 print advertisements in October, can modify these
6 advertisements before then with print media, and we see no
7 reason why future digital materials can't comply with the exact
8 language of the Court's order.

9 **THE COURT:** All right, Mr. Rosenberg.

10 **MR. ROSENBERG:** Yes, thank you. We agree with the
11 United States on that, and I just want to make sure that we're
12 talking about not just the inclusion of the word "reasonably,"
13 but the replacement of the "have" or "possessed" language in
14 place of the "could not have obtained" or "has not obtained"
15 because of the substantial and significant difference between
16 that and what's set forth in Your Honor's orders.

17 **THE COURT:** Ms. Colmenero.

18 **MS. COLMENERO:** Your Honor, it's my understanding
19 that the language that the State has used, and we used the
20 unable to obtain language, that there is reference to
21 reasonably within those voter-facing documents, that that is
22 sufficient. What Mr. Rosenberg just mentioned, which was
23 changing the obtain language to suggesting something that does
24 not have a form of ID, would, in fact, require a massive
25 overhaul of the voter education materials, and we believe it

1 would be inconsistent with the Court's order, because what we
2 are attempting to avoid was situations where individuals go to
3 the polls and think that they qualify for the reasonable
4 impediment declaration because they have just left their ID at
5 home.

6 And so we want to make it clear that this is not a
7 convenience document. The reasonable impediment declaration is
8 intended to help a very specific class of individuals, and it's
9 those who have a true reasonable impediment or physical
10 difficulty to obtaining one. So we do not agree that that
11 language should be changed and there should be a massive
12 overhaul of all of the current education and training
13 materials.

14 **MR. FREEMAN:** Your Honor, may I respond briefly?

15 **THE COURT:** Who's speaking, I'm sorry.

16 **MR. FREEMAN:** I apologize, this is Dan Freeman on
17 behalf of the United States. Your Honor, the Court's order
18 clearly included the language of the reasonable impediment
19 procedure for individuals who do not possess SB 14 ID and
20 cannot reasonably obtain it. And the State is suggesting that
21 it be allowed to replace the current question of whether a
22 voter does not possess an ID with a retrospective question of
23 whether a voter has not obtained it. And while the State has a
24 concern regarding voters who leave their ID at home, it should
25 not be permitted to change the general language of the

1 reasonable impediment education program in order to reflect
2 that narrow concern.

3 The United States respectfully requests that the
4 Court direct the State to include the actual language of the
5 remedial order with regard to the question of current
6 possession, and if the State needs to provide additional
7 examples and poll worker training to ensure that poll workers
8 are aware that a voter who has accidentally left their wallet at
9 home can't have a reasonable impediment declaration
10 (indiscernible).

11 **THE COURT:** Didn't Ms. Colmenaro address that they
12 could do that? What did you say, Ms. Colmenaro, in terms of
13 providing some specifics?

14 **MS. COLMENERO:** What I proposed is that the State
15 modify the FAQs on the voter ID web page to include an FAQ
16 that's directly addressing the lost, stolen, suspended or
17 revoked scenario, which I believe is what prompted this motion
18 to enforce in the first place in terms of individuals who fell
19 into that category who may not think that they qualify for the
20 reasonable impediment declaration.

21 **THE COURT:** But that's for the election workers also
22 somehow?

23 **MS. COLMENERO:** No, Your Honor, that's -- that
24 language already appears in the election official's training
25 manual.

1 **THE COURT:** Okay, okay.

2 **MS. COLMENERO:** In terms of that specific scenario.
3 It just does not appear in the FAQs, and so that's what we
4 would be proposing, is to add similar language or similar
5 guidance to voters to address this specific scenario.

6 **THE COURT:** Okay, Mr. Freeman.

7 **MR. FREEMAN:** And, your Honor, if I may respond, the
8 Court has recognized what matters to voter education to a large
9 extent is the qualifying message, and the State has replaced
10 the language in the Court's remedial order with its own
11 preferred language. And it's important that voters be aware
12 that the actual standard do not possess SB 14 ID
13 (indiscernible.)

14 **THE COURT:** I know, we are now here, a lot of stuff
15 has been printed, and I'm just trying to figure out what we can
16 do now going forward. So any final comments, Mr. Freeman, and
17 then Mr. Rosenberg, and then we need to see what we're going to
18 order here.

19 **MR. FREEMAN:** Yes, Your Honor, thank you. The United
20 States would request that the State be directed, to the extent
21 possible, to modify the language it uses to accurately reflect
22 the remedial order. Whether or not it can change that language
23 in some documents is a separate question, but moving forward,
24 we do request that in all instances, where possible, the "have
25 not obtained" language be replaced with "do not possess," and

1 that the word "reasonably" be included, as it is included in
2 the State's -- I'm sorry, in the Court's remedial order. Thank
3 you, Your Honor.

4 **THE COURT:** All right, Mr. Rosenberg.

5 **MR. ROSENBERG:** Very quickly, we agree with that, and
6 it seems to us that there are things that could be done, such
7 as errata sheets being sent out. They don't have to reprint
8 the whole handbook or policy manuals. There are ways of doing
9 this that are reasonable.

10 **THE COURT:** Okay. So then the Court is going to
11 grant the plaintiffs' motion to enforce the interim remedial
12 order in this respect: One, going forward, the State needs to
13 use the language in the order, which is the voters who do not
14 possess and cannot reasonably obtain SB 14 ID. So anything
15 that's going to be produced, printed from now forward. I
16 understand there's some things that are already out there. Any
17 questions on that, Ms. Colmenero?

18 **MS. COLMENERO:** No, Your Honor.

19 **THE COURT:** Okay.

20 **MS. COLMENERO:** Just so that we're both on the same
21 page, there will be some documents, obviously, that have the
22 old language, but moving forward the State's guidance will now
23 have different language.

24 **THE COURT:** Well, I mean, what else can we do, right?
25 So then 2, and I've already addressed this, that those -- the

1 press release, the votetexas.gov, the poster outside the
2 polling places that only talks about cannot obtain it, I
3 believe the State can change that, correct? That should not be
4 a problem? I know you don't want to and you don't agree with
5 me, but I didn't see where that would be -- present some of the
6 problems or issues with, say, the media things or some of the
7 training materials.

8 **MS. COLMENERO:** Well, if the Court is ordering us to
9 do it, we will comply with the Court's order. I would also
10 note that some of the press releases -- well, the press release
11 itself has been sent to counties, a template press release
12 similar to the one issued by the secretary himself, so there --
13 there may be other -- the secretary of state can change the
14 language of --

15 **THE COURT:** Right, no, I understand, what's out there
16 is out there.

17 **MS. COLMENERO:** Yeah.

18 **THE COURT:** And then you were going to address the
19 FAQs, correct?

20 **MS. COLMENERO:** Yes.

21 **THE COURT:** What else did we discuss, or can we
22 address?

23 **MS. COLMENERO:** And this is Ms. Colmenaro. I just
24 want to confirm, with respect to the FAQs, the State is going
25 to add an FAQ to specifically address the lost, stolen,

1 revoked, suspended scenario?

2 **THE COURT:** That's my understanding.

3 **MR. FREEMAN:** And, Your Honor, this is Dan Freeman.
4 Just to be clear, the FAQs will also be using the "do not
5 possess" language; is that correct?

6 **MS. COLMENERO:** Those -- and this is the State. That
7 language still contains the "unable to obtain" or "cannot
8 obtain" language. We were proposing a solution to address this
9 scenario that DOJ proposed to this class of individuals
10 (indiscernible.)

11 **THE COURT:** So you can't fix those? You can't fix
12 what's on the website? Just to reflect the language of the
13 order.

14 **MS. COLMENERO:** Your Honor, I mean, if you're going
15 to order us to do it, we will comply with the Court's order;
16 however, we just want to point out that our goal with these
17 FAQs all along was for there to be a consistent message, and
18 changing the language now in the guidance given could
19 contribute to voter confusion.

20 **THE COURT:** Any response?

21 **MR. FREEMAN:** Your Honor, this is Dan Freeman. Any
22 confusion that results from a change from the actual language
23 of the Court's remedial order to -- sorry, from language that
24 deviated from the Court's order to the actual language of the
25 Court's order is solely the fault of the State of Texas.

1 **THE COURT:** Yeah, the Court is going to order the
2 change. You all are going to go into the FAQs, they need to be
3 cleaned up. What else?

4 **MR. FREEMAN:** Your Honor, the United States has
5 requested that all the electronic lead sources, anything that's
6 gone out digitally, be changed to reflect the actual language
7 of the Court's order and then all prospective communication,
8 including the mass media, be changed where possible.

9 **THE COURT:** I think what my order is, that anything
10 going forward today reflect the Court's order. Anything done
11 after today, I believe all the training materials and all, it
12 is the Court's impression that when read as a whole together,
13 that although not ideal because the Court's language wasn't
14 tracked, that we were going to be okay with that for now, so
15 I'm not ordering all that to be changed.

16 **MR. ROSENBERG:** Your Honor --

17 **THE COURT:** This is kind of a mess. And it's obvious
18 it's a mess and confusing. When even officials are maybe not
19 saying the right things, how can we expect the poll workers or
20 the voters to know what's supposed to happen.

21 **MR. ROSENBERG:** Briefly, Your Honor --

22 **THE COURT:** But I mean, we are where we were. We
23 were just given this late July. We're trying to work as we
24 can. And anyway, who's that? Mr. Rosenberg?

25 **MR. ROSENBERG:** Yes, Your Honor. Quickly, in order

1 to charge and make sure that this is done in an efficient
2 manner without bothering Your Honor, can we be given drafts of
3 what their proposed changes are, such as the FAQs, before
4 they're implemented and have an opportunity --

5 **THE COURT:** Yes. Ms. Colmenero, can you do that,
6 please.

7 **MS. COLMENERO:** Yes, we can.

8 **MS. VAN DALEN:** And, Your Honor, this is Marinda Van
9 Dalen for the Taylor plaintiff. The speaking clarification,
10 the template press releases that have already gone to the
11 counties that I believe Ms. Colmenero has indicated have the
12 old language, can those be corrected?

13 **THE COURT:** Well, they're already out there, is what
14 she was saying, although they can correct what they have. I
15 mean, I guess she can send them out again. Ms. Colmenero?

16 **MS. VAN DALEN:** I think it's crucial, personally.

17 **MS. COLMENERO:** I think what we're running into here,
18 Your Honor, is that there are a lot of documents that are
19 currently uploaded to the secretary of state's website that
20 have the "cannot obtain" or "unable to obtain" language, which
21 if we update the secretary of state's press release, it will
22 have a different message to the voter. And, I mean, we're fine
23 with making those changes going forward. We just want to point
24 out that there is going to be conflicting messages out there
25 with little time before the election.

1 **MR. FREEMAN:** Your Honor, this is Dan Freeman for the
2 United States. To the extent that there's conflict, the change
3 will be from voters being incorrectly told that they may not be
4 able to vote to being told that they are able to vote. And any
5 confusion is going to be better than an incorrect message at
6 this point. And we believe that if the State is active in
7 correcting all those documents that should have initially
8 reflected the Court's remedial order --

9 **THE COURT:** Okay, we're not going back. I've already
10 talked about what we're changing. I'm just trying to see is
11 there anything else that needs to be cleared up?

12 **MR. FREEMAN:** Well, the United States would believe
13 that anything that has been electronically circulated to
14 officials should be recirculated. It's just a matter of
15 sending an e-mail, and we don't think there's a substantial
16 cost or impediment to doing that.

17 **THE COURT:** Ms. Colmenero?

18 **MS. COLMENERO:** Those documents have been uploaded to
19 the secretary of state's website for some time now. They've
20 been sent and disseminated out to the county election officials
21 and the counties have started printing those materials, and we
22 don't believe that the language in there read as a whole is
23 inconsistent at all with the Court's order. So we are fine to
24 move forward as the Court has suggested under its order and
25 ensure that future statements will have the language that the

1 Court is requiring; but to go back and change that all will
2 definitely disrupt the process.

3 **THE COURT:** All right.

4 **MR. FREEMAN:** And, Your Honor, this is Dan Freeman,
5 to the extent that those County officials have printed those
6 documents, as Mr. Rosenberg has suggested, errata sheets can be
7 used. We're not asking --

8 **THE COURT:** I'm not going to order that at this time.
9 What else needs to be addressed?

10 **MR. FREEMAN:** I believe the mass media communication,
11 Your Honor.

12 **THE COURT:** Well, she's saying it's already done,
13 that's already in place. Right, Ms. Colmenero?

14 **MS. COLMENERO:** Your Honor, there may be some
15 flexibility on the television and radio. I need to confirm --

16 **THE COURT:** Well, then that's really important,
17 because that's crucial, that's what a lot of people are going
18 to be seeing, so when can we know.

19 **MS. COLMENERO:** I will, hopefully, have an update
20 from them later this afternoon when I'm able to confirm that
21 along with our consultant.

22 **THE COURT:** And so you will immediately get with
23 Plaintiffs' counsel on that?

24 **MS. COLMENERO:** Yes.

25 **THE COURT:** Okay.

1 **MR. ROSENBERG:** Your Honor, Dan Rosenberg. Can they
2 also check to see if they can simply change the proofs that
3 they've sent into the print media which have not been published
4 and are not going to be published until the first week of
5 October? It seems to me that there's a possibility of not
6 pulling the ads, just changing the proofs.

7 **THE COURT:** I was just going to say, can you check on
8 that, Ms. Colmenero?

9 **MS. COLMENERO:** I have already checked on the
10 specific print advertisements appearing in certain newspaper
11 publications, and it is too late to change the information that
12 has been submitted for publication. So there are at least two
13 newspapers outlets that will be running the poster.

14 **THE COURT:** Okay, but I thought -- and maybe I'm
15 wrong, I thought with the print it was "unable to obtain" was
16 being used with the reasonable impediment language.

17 **MS. COLMENERO:** That is correct, Your Honor.

18 **THE COURT:** So that's, as I said, maybe not as ideal,
19 but still at least they're read as a whole, hopefully, and
20 won't send the wrong message. What else?

21 I'm not hearing anything else. I'm in a jury trial.
22 My jury is --

23 **MR. ROSENBERG:** Your Honor, our motion, the private
24 plaintiffs' motion on the intimidating --

25 **THE COURT:** You know, that's not -- again, I keep

1 using the words it's not an ideal situation. I don't know that
2 the State can tell these people what to say or do. I think it
3 just kind of confirms that this is confusing, even the elected
4 officials don't -- or the officials, State officials don't
5 maybe quite understand what's going on. It's unfortunate
6 because it sends a bad message to the community, to the voters
7 who we're trying to target here. You know, it does indicate
8 some lack of interest in really trying to facilitate the
9 ability to vote for those who need that help. But, you know,
10 the State can't tell them what to say and do, I don't think.

11 **MR. ROSENBERG:** And that's why we very narrowly
12 tailored the release that we requested so as to ask the Court
13 to clarify that the declaration is intended to be used by a
14 voter who in good faith believes he or she does not possess a
15 SB 14 ID and has a reasonable impediment, and also that just
16 because the voter had at some time been issued one or more of
17 the IDs does not mean in and of itself the voter signing this
18 declaration is a false statement. That does not ask the State
19 to do anything. It is simply clarifying the order so as to
20 give some assurance to the voters who are hearing these
21 statements in the media that they're going to be investigated,
22 that, in fact, there is this this good faith belief that is
23 part and parcel of this, and that the fact that at some time
24 they may have had an SB 14 ID issued does not mean they're not
25 allowed to sign the declaration if in good faith they believe

1 they do not have that now.

2 **THE COURT:** Ms. Colmenero, what is the State's -- we
3 can't control what other people are saying. What is the
4 State's intention regarding this good faith issue?

5 **MS. COLMENERO:** Well, Your Honor, we don't believe
6 that there needs to be a good faith exception added to the
7 Court's interim order or any type of --

8 **THE COURT:** No, no, no, but what do you all intend to
9 do with that declaration?

10 **MS. COLMENERO:** The executed declaration?

11 **THE COURT:** Yes, in terms of people signing it. What
12 is the State's intent there?

13 **MS. COLMENERO:** Well, the State itself, the secretary
14 of state doesn't have any investigatory powers itself.

15 **THE COURT:** But what do you all think? What do you
16 think? What does the State of Texas believe about that
17 declaration in terms of how it should be read?

18 **MS. COLMENERO:** Well, the way we read the declaration
19 is consistent with the language that's in there, that a person
20 who signs it must swear and affirm under penalty of perjury
21 that they face a reasonable impediment. And so someone who
22 signs a declaration falsely should in fact --

23 **THE COURT:** And that could be at the direction of the
24 poll worker, who's not going to know, really, how and why to
25 use it, as was the example that you all submitted, which the

1 person said their ID was at home, or whatever it was, and the
2 poll worker gave them the declaration, right?

3 **MS. COLMENERO:** Your Honor, that could very well be a
4 scenario that occurs; however, in terms of getting into like
5 the subjective good faith of a person every time they sign it,
6 that's really not up to the State. To the extent that there is
7 evidence that someone is signing a declaration falsely, the
8 county election officials can refer that to their local DA for
9 investigation, but the secretary of state's office itself is
10 not intending to take any kind of formal action.

11 **MR. DUNN:** Your Honor, this is Chad Dunn, if I could
12 respond at some point.

13 **THE COURT:** Yeah, we probably need to wrap up in the
14 next five minutes, I'm in a jury trial, but go ahead Mr. Dunn.

15 **MR. DUNN:** I'm very sorry, Your Honor, but this is an
16 issue that I'm afraid is metastasizing around the state, and if
17 the Court doesn't deal with it in some way, we're going to see
18 more and more of it. I mean, there's an active issue by
19 election officials to threaten and encourage potential criminal
20 prosecution, and now what we're hearing the State say is that
21 we're incapable of doing anything about it and, in fact, we
22 don't want to do anything about it.

23 And it's part and parcel of the problem, you can make
24 a young child clear the table, but if they don't want to, they
25 won't do a good job without close supervision. And what the

1 State is essentially saying is we'll pick up the forks, but not
2 the knives and the dirty plates. And people out there are
3 being told that they can potentially be prosecuted for going
4 down and voting, and now the State's chief lawyer on the
5 subject has told the Court the same thing, and we beg of the
6 Court to clarify the order that this is not some kind of dodge
7 or hustle or trap where people need to wake up the day after
8 election day and worry about going to jail.

9 **THE COURT:** Ms. Colmenero?

10 **MS. COLMENERO:** Well, Your Honor, we don't believe
11 that the language of the reasonable impediment declaration
12 itself is intimidating.

13 **THE COURT:** It's not the language, it's how people
14 are -- what they're saying about it.

15 **MS. COLMENERO:** Well, and Your Honor, we don't
16 believe that any of the language that Mr. Stanart has said --
17 first of all, as you indicated, he's not under our -- well, as
18 we have indicated, he's not under our control. All that he has
19 said is to the extent someone signs one falsely, he will refer
20 it to the appropriate --

21 **THE COURT:** But why is that even necessary? I
22 thought we're trying to help people who don't have these IDs,
23 can't reasonably obtain them, I thought we were trying to
24 facilitate their voting. But no, that's not what it sounds
25 like where the interest is.

1 Anyway, I'll look at that issue further. I think we
2 need to do something. I may either get you back on the phone
3 or issue an order. Anything else for today?

4 **MR. ROSENBERG:** Thank you very much, Your Honor.

5 **MS. COLMENERO:** No, Your Honor.

6 **MR. FREEMAN:** Thank you, Your Honor.

7 **THE COURT:** All right, you can be excused. Thank
8 you.

9 **(Hearing adjourned at 1:18 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

September 26, 2016

Signed

Dated

TONI HUDSON, TRANSCRIBER